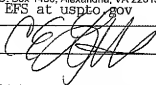



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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 25293	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] Or via EFS at <u>uspto.gov</u> 7/31/2006 on _____ Signature <u></u> Typed or printed name <u>Casey Leichter</u>		Application Number 10/621,779	Filed 07/16/2003
		First Named Inventor Hugh West	
		Art Unit 1731	Examiner Halpern, Mark
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>19,670</u>		<u></u> Signature <u>John M. Crawford</u> Typed or printed name <u>253-924-5611</u> Telephone number <u>July 31, 2006</u> Date	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____			
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below".			
<input type="checkbox"/> *Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PRE-APPEAL BRIEF REQUEST FOR REVIEW:
ARGUMENTS

Claims 1–15 are pending and active in the subject application.

In the final rejection, claims 1–2, 5–15 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Pittman et al 6,670,035. Claim 4 is included in the discussion of the rejection and it is assumed that claim 4 is included in this rejection.

The rejection states that Pittman et al disclose wood pulp fibers having a particulate material attached to a retention aid, such as polyamides, and a water soluble polyamide retention aid which attaches to a pulp fiber a particulate material capable of reducing the amount of hydrogen sulfide present in the environment surrounding the fiber.

This is not what Pittman et al disclose.

What Pittman et al disclose is binder fiber for nonwoven webs for absorbent products. The webs are useful in diapers, incontinence pads, sanitary napkins and other absorbent pads for liquids.

The binder fibers are low melt binder fibers that are heated and adhere to the cellulose fibers in the nonwoven web. The binder fiber may be a low melt polyolefin fiber or a bicomponent fiber having a low melt polyolefin portion. The high melt portion of the bicomponent fiber may be a polyamide such as nylon 6 or nylon 66. The low melt portion of the binder fiber is heat bonded to the cellulose fiber.

An enhancement agent – titanium dioxide, talc, silica, alum, calcium carbonate, calcium oxide, magnesium and other oxides – is dispersed within the low melt polyolefin.

The purpose of the binder fiber is to hold the nonwoven web together so it does not fall apart during manufacturing, processing, and during use. To determine whether the binder fibers do this, the web is tested for both dry tensile and wet tensile. In the wet tensile test the web is immersed prior to testing.

There is not a *prima facie* case under either 102(e) or 103(a) for several reasons.

First, there is no *prima facie* case because Pittman et al do not disclose or suggest a water soluble polyamide.

The only polyamide that Pittman et al disclose is a high melt polyamide such as nylon 6 or nylon 66.

[Column 4, line 27] When a bicomponent fiber is employed as the binder fiber, the high melt portion may be selected from the class of polyolefins ***; polyesters ***; polyamides such as nylon 6, nylon 66; polyacrylates ***; as well as mixtures and copolymers thereof.

The high melt polyamide of Pittman et al is used in a binder fiber. The high melt polyamide may be up to 95% of the weight of the binder fiber. The binder fiber of Pittman et al is a binder fiber that retains the wet tensile strength of the web and holds the nonwoven web together during use with water. If the binder fiber of Pittman et al was 95% water soluble then Pittman et al would not have a binder fiber that would hold the nonwoven web together when the web was used with water. Therefore, the binder fiber and the high melt polyamide of Pittman et al are not water soluble. The use of a water soluble polyamide in Pittman et al goes against the teaching of Pittman et al.

Second, there is no *prima facie* case because Pittman et al do not disclose or suggest that a water soluble polyamide can substituted for the high melt polyamide.

The final rejection suggests that a water soluble polyamide can be substituted for the high melt polyamide of Pittman et al. This ignores the purpose of Pittman et al, which is to retain the integrity of the web during use with liquids such as water.

The disclosure of Pittman et al cannot be considered piecemeal. The term “polyamide” of Pittman et al cannot be considered in a vacuum. The entire disclosure of Pittman et al must be considered.

Pittman et al describe a binder fiber that remains a binder fiber. Pittman et al disclose a binder fiber that bonds the cellulose fibers into a web. Pittman et al disclose a binder fiber that holds the web together during use with liquids. The web retains its wet tensile. The purpose of the binder fiber is to make sure the web does not fall apart when in use in water. The webs are used in absorbent pads such as diapers and come into contact with water during use.

Pittman et al disclose a binder fiber that can be 95% polyamide.

A binder fiber that was 95% water soluble polyamide would not hold the web together during use in water.

Pittman et al do not suggest a binder fiber that is water soluble.

Third, there is no *prima facie* case because Pittman et al do not disclose or suggest a polyamide that is a retention aid.

Pittman et al only disclose that the high melt polyamide be used in conjunction with a lower melt polyolefin in a bicomponent fiber. The high melt polyamide is not used by itself. It is the lower melt polyolefin, not the polyamide, that bonds to the fibers. The polyolefin may be used in a fiber by itself or in a bicomponent fiber with a higher melt material.

The purpose of Pittman et al is to provide a binder fiber that can be used at lower temperatures. The lower melt polyolefin does this.

Fourth, there is no *prima facie* case because the enhancement agents of Pittman et al are not capable of reducing the amount of hydrogen sulfide present in the environment surrounding the pulp fiber.

The enhancement agents of Pittman et al are dispersed within the polyolefins and not on the outside of the polyolefins.

[column 4, line 18] The enhancement agent is employed in the polymer in an amount from about 0.1 to about 1% based on the weight of the base polyolefin. The particle size, in order to achieve good dispersion within the polymer and good spinnability is in the range of about 0.04 to about 56 microns, and preferably in the range of about 0.05 to 2 microns.

[emphasis added]

The position stated in the final rejection is that two of the enhancement agents listed in Pittman et al, calcium oxide and magnesium oxide, are also materials listed in the present application as being capable of reducing hydrogen sulfide present in the environment surrounding the pulp fiber.

It is applicant's position that calcium oxide or magnesium oxide encased within a polyolefin is not capable of reducing hydrogen sulfide present in the environment surrounding the polyolefin or in the environment surrounding the cellulose fiber attached to the polyolefin. One must look to all of the facts to determine whether there is capability. One of the facts in Pittman et al is that the enhancement agents are fillers in the polyolefins and are dispersed within the polyolefins. They are encased within the

polyolefins. The enhancement agents are not placed where they can react with the environment surrounding the cellulose fibers. The polyolefins the enhancement agents are encased within are meltable, not soluble.

In contrast, the particles of the present invention are attached to the cellulose fibers by water soluble polymers. There will be a liquid phase when the hydrogen sulfide occurs. The particles are positioned to react with the environment surrounding the cellulose fiber. The particles do not have to remain attached to the fibers during use with liquids. They only have to react with the environment surrounding the fiber.

Lastly, there is no *prima facie* case because Pittman et al has not been applied as a whole but only piecemeal.

A few words, "polyamide", "cellulose fiber", "calcium oxide" and "magnesium oxide" have been taken out of the context of the Pittman et al disclosure and applied against the present claims. The rest of the disclosure of Pittman et al has been ignored.

The fact that the binder fibers must hold the web together during use with liquids has been ignored. The fact that only a high melt polyamide has been disclosed has been ignored. The fact that the calcium oxide and magnesium oxide are dispersed within the polyolefin has been ignored.

Claim 3 stands rejected under 103(a) as unpatentable over Pittman et al in view of Hochwalt. Hochwalt is cited for zeolites. According to the rejection, the zeolites of Hochwalt can be substituted for the enhancement agents of Pittman et al.

Claim 3 is dependent from claim 1 and all of the reasons stated above as to why there is no *prima facie* case with respect to Pittman et al also apply here.

Hochwalt does not use a zeolite by itself. Hochwalt uses a combination of an acid, a metal oxide and a synthetic zeolite. They are used in different ratios depending on the application. This composition may be combined with other elements such as diluents. Example 7 of Hochwalt provides a composition for sulfide odors. It is 60 grams of aspartic acid, 10 grams of synthetic zeolite (Smellrite.RTM) and 30 grams of zinc oxide. It contains only 10% by weight zeolite.

Hochwalt does not disclose a zeolite being used for sulfide odor. Hochwalt discloses a composition which contains a small amount of zeolite being used for sulfide odor.

Hochwalt does not disclose that this composition may be dispersed in a polyolefin, as is required by Pittman et al. There is no suggestion in either Pittman et al or Hochwalt that a composition containing a major amount of aspartic acid would be an enhancement agent in a low melt polyolefin.

All of the disclosure in Hochwalt indicates that the Hochwalt composition must be in contact with the odorous material in order to work. There is no indication that the Hochwalt composition would work when it is encased in a low melt polyolefin.